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3 **UNITED STATES DISTRICT COURT**

4 **DISTRICT OF NEVADA**

5  
6 ALFRED D. PORTER,

7 Plaintiff(s),

8 v.

9 LABORMAX STAFFING AGENCY,

10 Defendant(s).

Case No. 2:23-cv-00550-ART-NJK

**ORDER**

11 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to  
12 28 U.S.C. § 1915 to proceed *in forma pauperis*. Docket No. 2. Pending before the Court is  
13 Plaintiff's complaint, Docket No. 2-1, which must be screened pursuant to § 1915(e).

14 **I. *In Forma Pauperis* Application**

15 Plaintiff filed the affidavit required by § 1915(a). Docket No. 2. Plaintiff has shown an  
16 inability to prepay fees and costs or give security for them. Accordingly, the request to proceed  
17 *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Clerk's Office is further  
18 **INSTRUCTED** to file the complaint on the docket. The Court will now review Plaintiff's  
19 complaint.

20 **II. Screening the Complaint**

21 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the  
22 complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the  
23 action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted,  
24 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).  
25 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the  
26 complaint with directions as to curing its deficiencies, unless it is clear from the face of the  
27 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70  
28 F.3d 1103, 1106 (9th Cir. 1995).

1 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint  
 2 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is  
 3 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723  
 4 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim  
 5 showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*,  
 6 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it  
 7 demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause  
 8 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Papasan v. Allain*, 478 U.S. 265,  
 9 286 (1986)). The court must accept as true all well-pled factual allegations contained in the  
 10 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.  
 11 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do  
 12 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from  
 13 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.  
 14 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted  
 15 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal  
 16 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

17 In addition, the Court has a duty to ensure that it has subject matter jurisdiction over the  
 18 dispute before it, an issue it may raise at any time during the proceedings. *See, e.g.*, Fed. R. Civ.  
 19 P. 12(h)(3). Federal courts are courts of limited jurisdiction and possess only that power  
 20 authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). “A  
 21 federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively  
 22 appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221,  
 23 1225 (9th Cir. 1989). “The party asserting federal jurisdiction bears the burden of proving that the  
 24 case is properly in federal court.” *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001)  
 25 (*citing McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

26 Before filing suit, an employment plaintiff must administratively exhaust his remedies with  
 27 the United States Equal Employment Opportunity Commission or the Nevada Equal Rights  
 28 Commission. *See, e.g.*, *You v. Longs Drugs Stores Cal., LLC*, 937 F. Supp. 2d 1237, 1248-49 (D.

1 Haw. 2013). The plaintiff must attach to his complaint the right to sue letter issued in relation to  
2 those administrative proceedings. *See, e.g., Delaney v. Lynwood Unified School Dist.*, 2008 WL  
3 11338726, at \*3 (C.D. Cal. Apr. 7, 2008). Federal subject matter jurisdiction is lacking when the  
4 plaintiff did not exhaust his administrative remedies. *Lyons v. England*, 307 F.3d 1092, 1103 (9th  
5 Cir. 2002).

6 In this case, Plaintiff does not allege that he has administratively exhausted his remedies  
7 and he does not attach a right to sue letter.

8 In light of the above, Plaintiff's complaint is **DISMISSED** with leave to amend. If Plaintiff  
9 can cure the deficiencies identified above, he must file an amended complaint by May 24, 2023.

10 **III. Conclusion**

11 Accordingly, **IT IS ORDERED** that:

- 12 1. Plaintiff's request to proceed *in forma pauperis* is **GRANTED**. Plaintiff shall not be  
13 required to pay the filing fee. Plaintiff is permitted to maintain this action to conclusion  
14 without the necessity of prepayment of any additional fees or costs or the giving of a  
15 security therefor. This order granting leave to proceed *in forma pauperis* shall not  
16 extend to the issuance and/or service of subpoenas at government expense.
- 17 2. The Clerk's Office is **INSTRUCTED** to file Plaintiff's complaint on the docket.
- 18 3. The complaint is **DISMISSED** with leave to amend. Plaintiff will have until **May 24,**  
19 **2023**, to file an amended complaint, if the noted deficiencies can be corrected. If  
20 Plaintiff chooses to amend the complaint, Plaintiff is informed that the Court cannot  
21 refer to a prior pleading (i.e., the original complaint) in order to make the amended  
22 complaint complete. This is because, as a general rule, an amended complaint  
23 supersedes the original complaint. Local Rule 15-1(a) requires that an amended  
24 complaint be complete in itself without reference to any prior pleading. Once a plaintiff  
25 files an amended complaint, the original complaint no longer serves any function in the  
26 case. Therefore, in an amended complaint, as in an original complaint, each claim and  
27 the involvement of each Defendant must be sufficiently alleged.

28

4. Failure to comply with this order will result in the recommended dismissal of this case.

IT IS SO ORDERED.

Dated: April 25, 2023

Nancy J. Koppe  
United States Magistrate Judge